Filed 8/31/06 In re Carl H. CA1/5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re CARL H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. CARL H., Defendant and Appellant.	A112607 (Alameda County Super. Ct. No. J182653)

Carl H. appeals from a disposition entered after the juvenile court found true allegations that he had possessed a concealed weapon, (Pen. Code, § 12101, subd. (a)(1),) possessed cocaine base for sale, (Health & Saf. Code, § 11351.5,) possessed cocaine while armed with a loaded, operable firearm, (Health & Saf. Code, § 11370.1, subd. (a),) and possessed marijuana for sale (Health & Saf. Code, § 11359). He contends the trial court erred when it denied his motion to suppress. We disagree and will affirm the disposition.

I. FACTUAL AND PROCEDURAL BACKGROUND

On November 30, 2005, Oakland Police Officer Jason Andersen and his partner were on patrol when they received a call that appellant "might be out and about with a gun." Andersen knew appellant from previous encounters and knew where he lived. The officers drove to appellant's home arriving shortly after 1:30 p.m. When they arrived,

they saw a group of young men standing near a vehicle in a driveway. As the officers approached, appellant separated from the group and, hunched forward with his hands cupped near his waist, walked toward his home. Andersen yelled at appellant to stop, but appellant ignored the request. He hopped up the steps to his home, walked inside, and allowed the security door to slam shut.

About a minute later, appellant reappeared outside. The officers detained him and placed him in a patrol car.

Officer Andersen did not have a warrant. However he knew that appellant was on probation and subject to what Andersen described as a "full search clause". Andersen understood the clause to encompass appellant's "[p]erson, vehicle, house, his room, anything that he has control over."

Officer Andersen entered appellant's home, and after speaking with appellant's grandmother, searched his room. Andersen knew it was appellant's room because the grandmother told him so, and because Andersen had searched the room previously when arresting appellant about a year earlier. Hidden under the bed, Andersen found a loaded handgun, 13 rocks of cocaine base, and 22 baggies of marijuana.

Based on these facts, a subsequent petition was filed alleging appellant continued to come within the jurisdiction of the juvenile court because he committed the offenses we have set forth above.

Appellant filed a motion to suppress. He conceded he was on probation and subject to a search condition. However he argued it was a "three way" condition that only authorized a search of his person, vehicle, or property under his control. According to appellant the clause did not allow a search of his residence or a room in his residence.

The trial court conducted a hearing on appellant's motion and denied it explaining its decision as follows:

"When did it stop being his room? The police officer had been there on a prior – at least a prior occasion and searched, which resulted in the minor being arrested and prosecuted and being placed on probation and whatever else happened. That's number one. Number two, it sounds like defense counsel was wanting to suggest that maybe the

police officers searched everywhere; but they searched that room based upon the knowledge that they had. From the information that they had, they searched that one room. That's clear. . . .

"The condition is that he is to submit to search generally by any duly authorized peace officer at the request of any duly authorized police officer, his person or any property under his control, be it an automobile, be it a container or whatever. And that room was under his control. So the motion is denied."

Subsequently, the court found true the allegations that had been made. At disposition, the court committed appellant to the custody of the probation officer with a camp approved for placement. This appeal followed.

II. DISCUSSION

Appellant contends the trial court erred when it denied his motion to suppress.

The standard of review we apply is settled. "We defer to the trial court's factual findings where supported by substantial evidence, but we must exercise our independent judgment to determine whether, on the facts found, the search and seizure was reasonable under the Fourth Amendment standards of reasonableness." (*People v. Avila* (1997) 58 Cal.App.4th 1069, 1073-1074.)

Here appellant raises two arguments. First he contends the trial court should have granted his motion to suppress because the prosecution failed to satisfy its burden of showing he was on probation and subject to a search condition.

A warrantless search is per se illegal unless a recognized exception to the warrant requirement applies. (*In re Tyrell J.* (1994) 8 Cal.4th 68, 79.) A probation search is one of the recognized exceptions to the warrant requirement. (*Id.* at pp. 79-80.) The prosecution must prove the existence of the search condition by a preponderance of the evidence. (*People v. James* (1977) 19 Cal.3d 99, 106, fn. 4.)

The prosecution here satisfied that standard. Officer Andersen testified that appellant was on probation and was subject to a full search condition. The testimony of Andersen, by itself, is substantial evidence.

Appellant contends the prosecution failed to carry its burden of proof because it did not present an official record showing the search condition. Appellant also complains that Officer Andersen misstated the legal offense that formed the basis for the probation condition.[1] While the trial court was entitled to consider these facts, neither of them, either alone or in combination, compels the conclusion that the prosecution failed to carry its burden of proof. The court's ruling is supported by substantial evidence.

Alternately, appellant contends the trial court should have granted his motion to suppress because the police who conducted the search exceeded the scope of his probation search condition. This argument is based on the precise wording of the condition at issue. It states appellant was required to "Submit person, vehicle and property under [his] control to search by Probation Officer or peace officer with or without search warrant at any time of day or night."

Echoing the argument he made in the trial court, appellant contends this clause only authorized a search of his person, vehicle, or property under his control. It did not, appellant contends, authorize a search of his bedroom.

We reject this argument because, as the trial court aptly observed, appellant's bedroom was property that was under his control. The search was valid under the language that authorized a search of "property under [appellant's] control".

The conclusion we reach is fully consistent with case law. In *People v. Bravo* (1987) 43 Cal.3d 600, 602-603, fn. 1, the court addressed a probation condition that required the defendant to "Submit his person and property to search or seizure at any time of the day or night by any law enforcement officer with or without a warrant." The court ruled the wording of the probation search condition authorized a search of the defendant's home. (*Id.* at p. 607.)

Appellant contends the search was invalid because the bedroom was not under his control at the time it was searched. Rather, appellant was "handcuffed on the porch of his

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[1] Officer Andersen believed appellant was on probation for assault with a deadly weapon. (Pen. Code, § 245.) In fact, appellant had been charged with robbery while armed with a firearm. (Pen. Code §§ 211, 12022, subd (a)(1).)

home, thus his person and any property under his control was limited to the porch of the home." We reject this argument because we are obligated to construe probation search conditions as they would be understood by a reasonable person. (*People v. Bravo*, *supra*, 43 Cal.3d at pp. 606-607.) A reasonable person would understand the condition at issue here as permitting a search of property that appellant has under his control *prior to* the search. Indeed, if the clause was limited to property under appellant's control *at the time of* the search it would be a nullity. We decline to adopt such an unreasonable interpretation.

We conclude the trial court properly denied appellant's motion to suppress.[2]

III. DISPOSITION

The disposition is affirmed.

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Jones, P.J.

We concur:

_____

Simons, J.

_____

Gemello, J.

[2] Having reached this conclusion, we need not decide whether the search could be validated by the good faith exception described in *United States v. Leon* (1984) 468 U.S. 897.